IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9427 of 2004

Between:

P.Satheesh Kumar, S/o. P.Krishna Murthy,
R/o. D.No.6/53 , Chitravathi Road ,
Yenumalapalle(V), Puttaparthy(M),Anantapur Dist.

..... PETITIONER

AND

Vice Chariman,Sri Satya Urban Development Authority,
Puttaparthy, Anantapur Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction in the nature of Writ of Mandamus, declaring the action of the respondent in issuing notice dt.19-3-04 under U.C.No.1/2004 /TPA to demolish the building bearing D.No.6/53,Enumalipalli Panchayat, Puttaparthi (M),Ananthapur Dist as illegal, arbitrary and unconstitutional.

Counsel for the Petitioner : MR. P.SRINIVASULU

Counsel for the Respondent: GP FOR MUNCIPAL ADMN. & URBAN DEV.

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.9427 OF 2004

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondent in issuing the notice dated 19-03-2004 thereby directing the petitioner to remove the encroachments and deviations made against the approved plans as specified thereunder in Sy.No.42-1/part of Enumalapalli Village, Chitravathi Road within 15 days from the date of receipt of the notice as arbitrary and illegal.

The petitioner claims to be the owner of the house bearing No.6-53 situated at Enumalapalli Panchayat, Puttaparthi Mandal, Ananthapur District, having constructed the same in accordance with the approved plan dated 10-03-2003. It is stated that the neighbouring owner, who is inimically disposed against the petitioner,

filed W.P.No.13481 of 2003 alleging that the petitioner has encroached into common area and therefore seeking a direction to him to remove the illegal constructions made in the said land. This Court having taken note of the fact that the Urban Development Authority has already initiated the action by issuing necessary notice to the 4th respondent (writ petitioner herein) for removing the alleged encroachment and unauthorised constructions, disposed of the writ petition by order dated 16-12-2003 with a direction to the Urban Development Authority to consider the reply, if any, submitted by the 4th respondent and to pass appropriate orders.

A perusal of the impugned order makes it clear that the same was issued in terms of the order in W.P.No.13481 of 2003, dated 16-12-2003. However, the only grievance of the petitioner is that in spite of the fact that he gave a reply to the show-cause notice dated 17-6-2003, the respondent failed to consider the same and passed the impugned order directing removal of the alleged encroachments. Hence, this writ petition seeking a declaration that the action of the respondent is arbitrary and illegal.

On behalf of the respondent, a counter-affidavit has been filed stating that the respondent issued a notice dated 17-6-2003 with a direction to the petitioner to remove the encroachments. Thereafter, W.P.No.13481 of 2003 was disposed of on 16-12-2003 with a direction to consider the reply of the 4th respondent therein and to pass appropriate orders. Accordingly, the respondent issued the impugned notice dated 19-03-2004 directing the writ petitioner to remove the encroachments made against the approved plans under Section 42 of A.P. Urban Area (Development) Act, 1975.

On a reading of the impugned notice as well as the counter-affidavit filed by the respondent, it is clear that the respondent has not taken into consideration the reply of the petitioner explaining the allegation of encroachments as well as deviations against the approved plans. Though in the impugned order it was stated that the writ petitioner failed to submit explanation to the show-cause notice dated 17-6-2003, the writ petitioner states that an explanation was submitted through his counsel on 14-7-2003 denying all the allegations made in the show-cause notice. A copy of the said

explanation has been placed before this Court at page 19 of the material papers. It is also relevant to note that this Court while disposing of W.P. No.13481 of 2003 has referred to the fact that the writ petitioner got issued a detailed reply on 14-7-2003. In the circumstances, the respondent ought to have passed an order on merits after considering the said explanation.

Accordingly, the impugned notice dated 19-03-2004 is set aside and the Writ Petition is disposed of with a direction to the respondent to consider the reply of the petitioner dated 14-07-2003 and to pass appropriate orders in accordance with law. Till such time, there shall be a direction to the respondent not to demolish the structures in question. No costs.

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10th June, 2005.

gbs

To

1. The Vice Chariman, Sri Satya Urban Development Authority,
   Puttaparthy, Anantapur Dist.

2. Two CCs to G.P. for Municipal Admn. & Urban Development, High Court of AP Bldgs, Hyderabad (OUT).

3. Two CD copies.